

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-216
Table of Allotments,) RM-8895
FM Broadcast Stations.)
(Portsmouth, Ohio))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 18, 1997

Released: June 27, 1997

By the Chief, Allocations Branch:

1. At the request of Peter L. Cea ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 13876 (1996), proposing the allotment of Channel 298A to Portsmouth, Ohio, as the community's third local commercial FM transmission service. Comments were filed by the petitioner, Jackson County Broadcasting, Inc. ("Jackson County"), Hometown Broadcasting ("Hometown"), Roger King ("King"), J. Gilbert Hammond ("Hammond"), and Dennis Jolly ("Jolly").¹

2. Petitioner filed comments reiterating his intention to apply for Channel 298A, if allotted. In addition, Jackson County and Hometown Broadcasting filed supporting comments in which they individually state an intention to apply for the channel. Jackson County states that the allotment could provide Portsmouth, a community of 22,700 persons, with an additional competitive commercial service. King, Hammond and Jolly oppose the allotment at Portsmouth. King, as the manager of Tire World of Maysville, Kentucky, and Jolly, an automobile dealer in the West Union, Ohio, area, state that they have successfully advertised on Station WIOK, which operates on the co-channel in Falmouth, Kentucky. They contend that great harm will result from the allotment of Channel 298A at Portsmouth because Station WIOK's present coverage area will be adversely affected. Hammond, President of Hammond Broadcasting, Inc., the licensee of Station WIOK, states that its station is located in Pendleton County, Kentucky. According to Hammond, an engineering study indicates that Station WIOK will lose

¹ Comments were also filed by Rev. James Boggs, Bobby Carpenter and Rev. Carl Morton. Section 1.420 of the Commission's Rules, as well as paragraph 4 of the Appendix to the Notice, states that comments must be served on the petitioner. However, these comments were not served on the petitioner and thus will not be considered herein. In addition, a counterproposal was filed by IM Media Broadcasting, Inc. ("IM Media"), requesting the allotment of Channel 298A to Oak Hill, Ohio. However, based on a staff engineering review, Channel 298A cannot be allotted to Oak Hill in compliance with the Commission's minimum distance separation and other technical requirements. In order to comply with the Commission's mileage separation requirements, Channel 298A at Oak Hill requires a site restriction of 15.9 kilometers (10.5 miles) west of Oak Hill. This distance is too far from the community to provide it with the required 70 dBu signal. Therefore, IM Media's counterproposal will be dismissed.

"significantly large" listening areas in both Kentucky and Ohio if Channel 298A is allotted to Portsmouth. Further, Hammond states that the lost listening areas are ones upon which it depends on for economic support from both listeners and advertisers. Hammond contends that Station WIOK has reached out to these areas east and northeast of its community of license because of the "infringement" of new stations in Greensburg and Corydon, Indiana, Dayton, Ohio, and Owingsville, and London, Kentucky. If a new station is now allowed at Portsmouth, Hammond contends that it will lose both listeners and advertisers.

3. The economic impact concerns of King, Hammond and Jolly that a new station at Portsmouth will restrict Station KIOK's listening and advertising areas are issues which the Commission has already determined are not relevant in either a licensing or allotment context. See FM Channel Assignments: Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. denied, 4 FCC Rcd 2276 (1989). Consequently, there is no basis under the current state of Commission precedent for consideration of these issues. Further, since Channel 298A can be allotted to Portsmouth in compliance with the Commission's minimum distance separation requirements, there will be no infringement upon Station WIOK's protected interference-free contour.

4. We believe the public interest would be served by allotting Channel 298A to Portsmouth, Ohio, since it could provide the community with its third local commercial FM service. Channel 298A can be allotted to Portsmouth in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.²

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 11, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Portsmouth, Ohio	257A, 281C, 298A

6. The window period for filing applications for Channel 298A at Portsmouth, Ohio, will open on August 11, 1997, and close on September 11, 1997.

7. IT IS FURTHER ORDERED, That the counterproposal filed by IM Media Broadcasting, Inc., to allot Channel 298A to Oak Hill, Ohio, IS DISMISSED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

² The coordinates for Channel 298A at Portsmouth are 38-44-00 North Latitude and 82-59-56 West Longitude.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
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